IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

UNITED STATES OF AMERICA	*	
v.	*	**Criminal No. GJH-16-0434**
KEVIN HEITING	*	

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MOTION TO SUPPRESS STATEMENTS

Mr. Kevin Heiting, through undersigned counsel, hereby moves this Honorable Court pursuant to Rule 12(b)(3) of the Federal Rules of Criminal Procedure to suppress any and all statements, admissions, and confessions ("statements") allegedly given by Mr. Heiting, whether oral, written or otherwise recorded, which the government proposes to use as evidence at trial. In support whereof, Mr. Heiting alleges as follows:

1. Mr. Heiting is charged with Possession of Child Pornography, 18 U.S.C. § 2252A(a)(5)(B) and (b)(2). Indictment (ECF 20).

2. Discovery indicates that Mr. Heiting allegedly made certain statements to law enforcement. This motion seeks to exclude all alleged statements which the government may seek to introduce at trial, whether or not such statements are yet known to counsel or are specified herein. However, without limitation, the following alleged statements are specifically at issue:

(a) Statements allegedly made by Mr. Heiting to Homeland Security Investigations agents on May 19, 2016.

(b) Statements allegedly made by Mr. Heiting to Customs and Border Protection agents on August 9, 2016.

3. Any and all alleged statements were obtained in violation of Mr. Heiting's privilege against self-incrimination, his right to counsel as guaranteed by the Fifth and Sixth Amendments to the United States Constitution, the Supreme Court's holding in *Miranda v. Arizona*, 384 U.S. 436 (1966), and were otherwise involuntary.

4. Any and all alleged statements were also the fruit of Mr. Heiting's illegal arrest or detention in violation of the Fourth Amendment of the United States Constitution. As such, any statements allegedly made by Mr. Heiting subsequent to his illegal arrest or detention represent "fruit of the poisonous tree" and must be suppressed under *Wong Sun v. United States,* 371 U.S. 471 (1963).

5. The May 19th alleged statements occurred during the government's unreasonable entry and search of Mr. Heiting's residence in violation of the Fourth Amendment to the United States Constitution.[1] As such, this alleged statement also represents "fruit of the poisonous tree" and must be suppressed under *Wong Sun*.

6. The August 9th alleged statements were also fruit of the May 19th unreasonable entry and search, because it was the evidence allegedly recovered during that search which presumably resulted in Mr. Heiting being targeted for secondary inspection and interview upon his reentry to the United States. *Wong Sun* therefore requires suppression of the August 9 statement as well.

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[1] A motion relating to the search of Mr. Heiting's residence will be filed simultaneously with the present Motion.

7. Mr. Heiting is entitled to a hearing regarding the voluntariness of any alleged statements in accordance with the provisions of 18 U.S.C. § 3501[2] and the principles set forth in *United States v. Inman*, 352 F.2d 954 (4th Cir. 1965).

8. Based on the representations of government counsel, the two alleged statements identified *supra* are the only ones known to the government which the government seeks to introduce in its case in chief. Mr. Heiting reserves the right to supplement this motion in the event the government identifies additional statements.

WHEREFORE, as a result of the Constitutional violations alleged herein, Mr. Heiting requests that this Court enter an Order suppressing any and all statements made by Mr. Heiting.

Respectfully submitted,

JAMES WYDA
Federal Public Defender

/s/

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[2] In *Dickerson v. United States*, 530 U.S. 428 (2000), the Supreme Court affirmed *Miranda*, and held that 18 U.S.C. § 3501 is unconstitutional insofar as it overruled *Miranda*. This motion assumes that the procedures specified in Section 3501 to determine voluntariness of a statement that are not in conflict with *Miranda* survive.

STATEMENT OF POINTS AND AUTHORITIES

1. *Brown v. Illinois*, 422 U.S. 590 (1975).

2. *McNabb v. United States*, 318 U.S. 332 (1943).

3. *Mincey v. Arizona*, 437 U.S. 385 (1978).

4. *Miranda v. Arizona*, 384 U.S. 436 (1966).

5. *Wong Sun v. United States*, 371 U.S. 471 (1963).

6. *United States v. Inman*, 352 F.2d 954 (4th Cir. 1965).

/s/
DOUGLAS R. MILLER (Bar # 18309)
Assistant Federal Public Defender

REQUEST FOR HEARING

Pursuant to Rule 105.6 of the Local Rules of the United States District Court for the District of Maryland, a hearing is requested on Defendant's motion.

/s/
DOUGLAS R. MILLER (Bar # 18309)
Assistant Federal Public Defender